

AGING DEPARTMENT [321]

**Notice of Intended Action**

Pursuant to the authority of Iowa Code chapters 17A, 22, 231, 249H, and Executive Order 11, the Aging Department hereby gives Notice of Intended Action to adopt amendments to Chapter 11, “Waivers or Variances from Administrative Rules,” Iowa Administrative Code.

The proposed amendments permit the director sole discretion to grant a waiver or variance from a rule adopted by the department, in whole or in part, based on a completed petition or the director’s own motion in certain circumstances.

Any interested person may make written suggestions or comments on the proposed chapter on or before January 19, 2010. Such written suggestions or comments should be directed to the Department on Aging, Jessie M. Parker Building, 510 E. 12<sup>th</sup> Street, Des Moines, Iowa 50319; E-mailed to [lisa.burk@iowa.gov](mailto:lisa.burk@iowa.gov); or faxed to (515) 725-3300.

These rules are intended to implement Iowa Code chapters 17A, 22, 231, 249H, and Executive Order 11.

The following amendments are proposed.

Adopt the following amendments to Chapter 11:

Amend rule 321 – 11.4(17A,231) as follows:

**Criteria for waiver or variance.** ~~In response to a petition completed pursuant to rule 321 – 11.6(17A, 231, ExecOrd11), the department may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:~~ At the sole discretion of the director, the director may issue an order, in response to a completed petition or on the director’s own motion, granting a waiver or variance from a rule adopted by the department, in whole or in part, as applied to the

circumstances of a specified person or a specific narrowly drawn class of persons if the director finds based on clear and convincing evidence that:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

**ITEM 2.** Amend rule 321 – 11.17 as follows:

These rules are intended to implement Iowa Code chapters 17A, 22, 231, 249H, and Executive Order Number 11.